

California Agricultural Export Training Certificate (CalAgX) Executive Series 2008

Session IV: Foreign Regulations & Legal Aspects

*California Centers for International Trade Development (CITD)
in cooperation with the California Department of Food and Agriculture*



Session Four Overview

- Foreign Government Import Requirements
- Tariffs / Trade Barriers
- Foreign Market Requirements
- International Trade Agreements

Foreign Government Import Requirements

- Why do countries restrict / control imports?
 - National Security
 - Human health
 - Animal / Plant Health
 - Economic Health (anti-dumping)
 - Political Reasons
 - “Trade Wars”
 - Protectionism
 - Income Generator

Foreign Government Import Requirements

Governments control imports through:

- Total Ban
- Quotas
- Tariffs / Duties
- TRQ (Tariff Rate Quotas)
- Import Licenses
- Sanitary / Phytosanitary restrictions
- Documentation

Ban

- Rare in commercial world trade today.
 - Japanese ban on rice imports
- Still found in isolated cases
 - Ban on *cannabis* imports to the US
 - Ban on imports of alcoholic beverages in various Arab countries
- Generally a major target in international trade negotiations.

Quotas

- Allows a designated amount of product into the country – after which time, any further imports are banned.
- Also a target for elimination under world trade negotiations.

Tariffs / Duties

- Primary method for controlling imports and generating income for importing country's government. A tax on imported products, based upon value OR volume.
 - Government can restrict imports by raising tariffs, or expand imports by lowering tariffs.
 - A primary area of discussion in international trade negotiations – overall world tariff levels continue to decrease.

Tariff Rate Quotas (TRQs)

Allows a specified amount of product to be imported at a lower tariff rate. Imports over that amount are taxed at a higher rate.

These may also be time specific (on a yearly basis, or in effect only at specific times within the year).

Import Licenses / Permits

- Typically, issued by the foreign government to the importer – granting permission to import a specified quantity of a certain product.
 - Targeted for elimination in trade negotiations, but still prevalent in developing countries, non-WTO nations, or during “phase-in” periods.

Sanitary / Phytosanitary Restrictions

Foreign government restricts imports based upon fear of allowing hazardous items into the country.

- “Sanitary” concerns general health, either to humans or animals
 - Food additives / artificial ingredients
 - Chemical residues
 - Disease
- “Phytosanitary” concerns plant health – ie., introducing unwanted pests into the country

www.aphis.usda.gov/import_export/plants/plant_exports/index.shtml

Documentation

Customs officials and food/ag inspectors require certification from exporter/exporting country to fulfill importing country's requirements:

- Certificate of Origin: to establish origin of product for tariff purposes
- Phytosanitary certificate: to certify agricultural products were inspected by “competent authority” in exporting country
- Health Certificate / Veterinary certificate: to certify that the product is free from disease or was produced in a sanitary manner.

Documentation (Continued)

- Free Sale Certificate: certifies that the product is “freely sold” in exporting country (is not restricted)

Lab Analysis: often required to verify the lack of presence of any ingredient or chemical restricted by importing country.

- Import Permit: If an import permit is required, documentation demonstrating that a permit was issued for the shipment is required by customs / inspectors.

Documentation (Continued)

Other Documents that may be required:

- Organic certification
- GMO-testing certification
- Grade Certification / Conformity with Standards

Documentation (Continued)

Where to obtain proper certificates:

- County Agricultural Commissioner – easiest place to obtain the Phytosanitary Certificate
- Certificate of Origin: Local Chamber of Commerce
- USDA / Food Safety Inspection Service: Health Certificates
- Food & Drug Branch / CA Dept. of Health Care Services: Free Sale Certificate

<http://ww2.cdph.ca.gov/programs/Pages/FDBExportDocumentProgram.aspx>

- The Processed Products Branch of the USDA - Agricultural Marketing Service offers product certification services for canned, frozen, and dehydrated fruits, vegetables, and related products.

Foreign Import Regulations

Online Resources

- Compilation of US Agencies involved in trade certification:
www.fas.usda.gov/agx/ship_doc_req/food_ag_us_req.asp
- US Trade Representative: Report on Foreign Trade Barriers
www.ustr.gov/Document_Library/Reports_Publications/2008/2008_NTE_Report/Section_Index.html
- Maximum Residue Level (MRL) Database:
<http://www.mrldatabase.com/>

Foreign Market Requirements

Once your product has entered the country (cleared customs), are there other pitfalls in reaching the final consumer?

Foreign Market Requirements

- Labeling
- Product Name / Regional Designation/
Appellation
- Packaging
- Quality Control Certification

<http://www.fas.usda.gov/scriptsw/AttacheRep/default.asp>

Labeling

- Labels must clearly indicate to the end user the contents of the package. This will affect the language, graphics, any health claims, ingredients, quantity and nutritional statements made on the label.
- The metric system of weights and measures is the dominant system worldwide.

Example: Canadian Labeling Guide:

<http://www.inspection.gc.ca/english/fssa/labeti/guide/toce.shtml>

Appellations

Many product names commonly seen in the US are controlled in international trade:

- Champagne - a type of wine produced in a particular part of France
- Roquefort - cheese produced in France
- Mozzarella - a buffalo cheese produced in Italy
- Tuscany - olive oil produced in a particular area of Italy
- Tequila – must be produced in Tequila region of Mexico

Packaging

- Food containers must conform to the standards of the country – sizes and shapes are often regulated by official standards
- Many countries have established low waste / recycling / reuseable packaging laws
 - Wood Packaging Materials:

www.aphis.usda.gov/import_export/plants/plant_exports/wpm/index.shtml

Quality Control Certification

- Importers are increasingly demanding adherence to ISO – 9000, HACCP, GMP – or other quality control programs
 - Europgap: QC program adopted by European retailers
- With increasing attention to food safety, foreign trade is requiring traceability of ingredients and finished products.

International Trade Agreements

- Negotiated treaties between countries to reduce trade barriers
 - NAFTA – North American Free Trade Agreement
 - CAFTA-DR – Central American Free Trade Agreement
 - KORUS FTA - Korean Free Trade Agreement
 - WTO (GATT) – World Trade Organization (General Agreement on Tariffs & Trade)

http://www.ustr.gov/Trade_Agreements/Section_Index.html

- Codex Alimentarius – default international standards

www.codexalimentarius.net

International Trade Agreements

- The USDA has the responsibility for formulating the food & agriculture “platform” for international trade negotiations – which are negotiated by the US Trade Representative
- These agreements may affect you as an exporter – either reducing tariffs overseas, or increasing competition domestically. Educate yourself on trade issues and make your opinion known.

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Executive Series 2009

Session IV: Part 2 Legal Aspects

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Overview

Legal Aspects of Exporting

- Differing legal systems around the world
- US laws effecting exporting and operations in foreign countries
- Operating within the legal parameters of importing country
 - Contract Law
 - Product Liability
 - Intellectual Property Rights (IPR)

So You Know the Answer?

- Assume a foreign distributor of your product has done very little to promote your products. Can you appoint a new distributor?
- A U.S. company is asked to bid on a project to provide food to a foreign government and is asked to pay a commission to a foreign official to “get the sale”. Should they make the payment?
- A U.S. Company has a patented a process to add flavor to popcorn. Is the patent protected in Europe?

International Legal Systems

- When a company expands internationally, they have a number of legal issues that must be addressed
- There are:
 - U.S. laws that apply internationally
 - Foreign laws that will apply to U.S. companies
 - International laws that apply to all companies
 - But not all laws apply all the time!

Three Types of Legal Systems

- Common Law: as in the U.S. and the U.K. – law based on tradition, precedent, and custom. Courts interpret the law based on these characteristics.
- Civil Law: as in Japan and many European countries – based on a detailed set of laws organized into codes. The laws are rarely revised and have been developed with greater consensus
- Theocratic: as in Saudi Arabia and Iran – law based on religious precepts / writings

US Government Export

Regulations

National Security

Export Controls are primarily a function of national security – which includes political embargos (for example, controls on export to Cuba)

The Bureau of Industry and Security (BIS) controls what, where, and to whom you can export from the US

<http://www.bis.doc.gov/index.htm>

U.S. Export Law

- **Export Licenses:** Not typically required of food / ag items. Issued for items such as super-computers, nuclear materials, etc., considered vital to national security.

<http://www.bis.doc.gov/licensing/exportingbasics.htm>

- **“Trading with the Enemy” / Patriot Act**
 - Denied Persons List / Specially Designated Nationals & Blocked Persons

<http://www.bis.doc.gov/complianceand enforcement/liststocheck.htm>

- **Embargoed Countries**

- **Controlled Items**

- “National Treasures”, artifacts
- Illegal products (drugs, etc.)
- Produced from endangered species – requires CITES certification (Convention on International Trade in Endangered Species)

Other U.S. Laws

- Foreign Corrupt Practices Act – prohibits payments to foreign government officials
- Tax Law concerning foreign income

Foreign Laws

Contract Law

- Foreign laws can be very different from the U.S. with regard to contracts
 - Civil versus common law
 - Use of jurisdictional clause
- Arbitration may be best method to resolve disputes

Distributor Contract

- Most distributors request 3 year contracts of exclusivity
- Good idea to put an attachment committing distributor to purchase mutually agreed upon levels annually
 - Can serve as basis for termination, if necessary
- Outline expectations for marketing/promotion
- Specify that distributor is responsible to work with manufacturer to ensure packaging and language compliance
- Specify US law, State of CA, if possible as governing law

Selecting the Right Type of Protection

Class Exercise

- For each of the scenarios discussed, which of the following would be the right type of protection:
 - Copyright
 - Trademark
 - Patent
 - Trade secrets

Intellectual Property Rights (IPR)

- Patents: protects the invention or product itself
- Trademark: protects a phrase, symbol, design
- Copyright: protects an original artistic or literary work and the expression of an idea
- Trade Secrets: protects insider-knowledge of a company such as pricing or competitive practices .

IPR Protections

- A U.S. patent is NOT protected internationally unless the holder files for protection
- A U.S. trademark is also NOT protected
- A U.S. copyright is protected
- A U.S. trade secret is protected

All of the above are generalizations. You should seek legal advice on any specific IPR issues.

IPR Protections

- There is no such thing as a global patent
- Patent/Trademark protections must be filed on a per country basis. This can be very expensive, so do it as a need basis
- On some countries IPR protection is not enforced, and registration may not be worth the expense.

Licensing Agreements

- Contract to assign various intellectual property rights to foreign party
 - Use of brand name / trademark
 - Use of processing technology (joint venture or foreign manufacturing)

Other Legal Issues

- Product Liability – generally not as great as in the U.S. but companies should get insurance
 - Can be added onto your domestic policy – not expensive
 - Good idea to have international product liability insurance when you begin to send out samples.
- Tax law within the country
- Labor laws (relevant if you open an office in the country)
- Anti-trust laws

Session IV Wrap-up

- Import Requirements and Documentation vary greatly from one country to the next. Entering a new market necessitates a whole new “learning curve” on that market’s requirements.
- Pay attention to Trade Agreements – they can offer both opportunities and Threats
- Protect yourself and your product when dealing in foreign countries.

Homework

Read “International Marketing”

Chapter 9 – Preparing for Market Entry, Pages: 80 – 110

Chapter 10 – Developing Distribution, Pages: 111 – 123

Review Chapter 15 – The Marketing Plan, Pages: 164 – 168

Browse through the USDA-Foreign Agricultural Service website on
Market Research:

www.fas.usda.gov/agx/market_research/market_research.asp